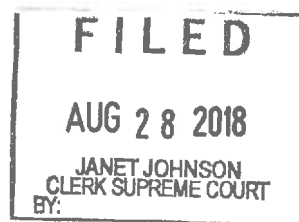


En Banc

**MINUTES**  
*Arizona Supreme Court*  
**Monday, August 27, 2018**



No. 6402

**R-17-0044**  
(1)

**RULE 43, RULES OF THE SUPREME COURT**

WOULD AMEND RULE 43, RULES OF THE SUPREME COURT TO ENCOURAGE OVERDRAFT PROTECTION FOR CLIENT TRUST ACCOUNTS; SET PROCEDURES FOR RECTIFYING OVERDRAFTS AND GIVING NOTICE TO THE STATE BAR OF FAILURE TO RECTIFY OVERDRAFTS; AND TO REQUIRE LAWYERS TO LEAVE UNTOUCHED CLIENT TRUST ACCOUNT DEPOSITS IN EXCESS OF \$5,000 FOR TEN DAYS TO ALLOW CHECKS TO CLEAR

ORDERED: Petition to Amend Rule 43, Rules of the Supreme Court = DENIED.

**R-17-0049**  
(2)

**RULE 72, RULES OF FAMILY LAW PROCEDURE**

WOULD AMEND RULE 72, RULES OF FAMILY LAW PROCEDURE TO ALLOW THE TRIAL COURT TO APPOINT A FAMILY LAW MASTER ONLY IF THE PARTIES STIPULATED TO THE APPOINTMENT IN WRITING OR ON THE RECORD IN OPEN COURT

ORDERED: Request for Permission to File this Petition Outside of the Rule 28 Timeline = GRANTED.

FURTHER ORDERED: Petition to Amend Rule 72, Rules of Family Law Procedure = DENIED.

**MINUTES**  
*Arizona Supreme Court*  
**Monday, August 27, 2018**

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**R-18-0004**  
(3)

**RULE 31(d), RULES OF THE SUPREME COURT**

WOULD AMEND RULE 31(d), RULES OF THE SUPREME COURT TO IMPROVE ACCESS TO JUSTICE FOR SMALL BUSINESS LITIGANTS AND TO REORGANIZE AND MODERNIZE THE RULE

ORDERED: Petition for Amendments to Rule 31(d), Rules of the Supreme Court = CONTINUED.

**R-18-0010**  
(4)

**RULE 30, RULES OF THE SUPREME COURT**

WOULD AMEND RULE 30, RULES OF THE SUPREME COURT TO GIVE COURTS THE DISCRETION TO DENY REQUESTS FOR CERTIFIED REPORTERS IN PROCEEDINGS WHERE A CERTIFIED REPORTER IS NOT MANDATORY AND THERE IS NO CERTIFIED REPORTER AVAILABLE

ORDERED: Petition to Amend Rule 30, Rules of the Supreme Court = DENIED.

**R-18-0011**  
(5)

**NEW RULE 13, RULES OF PROCEDURE OF ADMIN DECISIONS**

WOULD EXPRESSLY PROVIDE BY RULE THAT APPEAL FROM A SUPERIOR COURT DECISION IN AN ADMINISTRATIVE APPEAL SHOULD BE TO THE ARIZONA COURT OF APPEALS IN THE FIRST INSTANCE, NOT THE ARIZONA SUPREME COURT

ORDERED: Petition to Adopt Rule 13, Rules of Procedure for Judicial Review of Administrative Decision = ADOPTED, effective January 1, 2019.

**MINUTES**  
*Arizona Supreme Court*  
**Monday, August 27, 2018**

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**R-18-0017**  
(6)

**RULE 7, ARCAP, AND RULES 62 AND 69, ARCP**

WOULD CLARIFY THE APPEAL BOND SCHEME AND COMPUTATION OF BOND AMOUNTS, ADOPT ASPECTS OF FED. R. CIV. P. 62, AND CREATE AN AUTOMATIC DISCOVERY STAY

ORDERED: Petition to Amend Rule 7, Rules of Civil Appellate Procedure and Rules 62 and 69, Rules of Civil Procedure = ADOPTED as modified, effective January 1, 2019.

**R-18-0018**  
(7)

**RULES 38, 39, 49, 77 AND 84, RULES OF CIVIL PROC**

WOULD SIMPLIFY THE PROCEDURE FOR GETTING A JURY TRIAL TO ENSURE AGAINST WAIVER BY MERE INADVERTENCE AND TO ELIMINATE THE JURY DEMAND TRAP IN CASES REMOVED TO FEDERAL COURT

ORDERED: Petition to Amend Rules 38, 39, 49, 77, and 84, Rules of Civil Procedure = ADOPTED as modified, effective January 1, 2019.

**R-18-0019**  
(8)

**RULE 65(A)(2)(b), RULES OF FAMILY LAW PROCEDURE**

WOULD MAKE THE PROCESS FOR SEEKING DISCOVERY COMPLIANCE AND SANCTIONS APPLY TO ALL DISCOVERY MECHANISMS IN THE RULES OF FAMILY LAW PROCEDURE

ORDERED: Petition to Amend Rule 65(A)(2)(b), Rules of Family Law Procedure = DENIED.

**MINUTES**  
*Arizona Supreme Court*  
**Monday, August 27, 2018**

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**R-17-0035**  
(9)

**RULE 49(a)(2)(C)(ii), RULES OF THE SUPREME COURT**

WOULD REMOVE THE UNINTENDED PUNITIVE EFFECT ON RESPONDENTS OF THE CURRENT RULE WHICH REQUIRES POSTING OF PROBATION ON THE STATE BAR WEBSITE FOR FIVE YEARS

ORDERED: Petition to Amend Rule 49(a)(2)(C)(ii), Rules of the Supreme Court = ADOPTED as modified, effective January 1, 2019.

**R-17-0045**  
(10)

**RULES 7(d)(2)(B) et al, VARIOUS RULES OF PROCEDURE**

WOULD AMEND VARIOUS RULES CONCERNING THE MERIT SELECTION, EVALUATION, AND RETENTION OF JUDGES. IT WOULD REQUIRE (1) WRITTEN EXAMINATION OF JUDICIAL APPLICANTS' KNOWLEDGE OF ARIZONA LAW; (2) RETENTION OF NEGATIVE COMMENTS ABOUT JUDICIAL APPLICANTS; AND (3) THAT ONCE APPOINTED, JUDGES HAVE PERMANENT ASSIGNMENT TO A DIVISION THAT CLOSELY MATCHES THEIR EXPERTISE

ORDERED: Petition to Amend Rules 7(d)(2)(B) et al, Rules of the Supreme Court = DENIED.

**MINUTES**  
*Arizona Supreme Court*  
**Monday, August 27, 2018**

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**R-17-0050**  
(11)

**RULES 11 AND 26(b)(2)(D), RULES OF CIVIL PROCEDURE**

WOULD AMEND RULE 11 AND ADD RULE 26(b)(2)(D), RULES OF CIVIL PROCEDURE CONCERNING DISCLOSURE/DISCOVERY SPECIFIC TO PARTIES TO CONTRACTS AND ALSO MAKE MANDATORY CERTAIN COURT SANCTIONS

ORDERED: Petition to Amend Rule 11 and Add Rule 26(b)(2)(D), Rules of Civil Procedure = DENIED.

FURTHER ORDERED: Supplemental Petition to Amend Rule 11 and Add Rule 26(b)(2)(D), Rules of Civil Procedure = DENIED.

**R-17-0052**  
(12)

**RULES 47, 48, AND 58, RULES OF THE SUPREME COURT**

WOULD AMEND RULES 47, 48, AND 58, RULES OF THE SUPREME COURT TO CORRECT CAPITALIZATION AND CROSS-REFERENCES, TO ADD A NOTICE REQUIREMENT FOR PRODUCTION OF DOCUMENTS, AND TO CHANGE THE TIME FOR INITIAL DISCOVERY REQUESTS IN ATTORNEY DISCIPLINE MATTERS

ORDERED: Petition to Amend Rules 47, 48, and 58, Rules of the Supreme Court = ADOPTED as modified, effective January 1, 2019.

**R-18-0002**  
(13)

**RULE 28, RULES OF THE SUPREME COURT**

WOULD UPDATE, RESTYLE, AND REORGANIZE RULE 28, RULES OF THE SUPREME COURT THE, "RULEMAKING RULE"

Separate Order.

**MINUTES**  
*Arizona Supreme Court*  
**Monday, August 27, 2018**

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**R-18-0007**  
(14)

**RULE 26(b)(4), RULES OF CIVIL PROCEDURE**

WOULD CONFORM ARIZONA PROCEDURE WITH FEDERAL PROCEDURE ON THE DISCOVERABILITY OF DRAFT EXPERT REPORTS AND COMMUNICATIONS BETWEEN PARTIES' ATTORNEYS AND EXPERTS

ORDERED: Petition to Amend Rule 26(b)(4), Rules of Civil Procedure = ADOPTED as modified, effective January 1, 2019.

**R-18-0008**  
(15)

**VARIOUS RULES: EVIDENCE, CRIMINAL, JV, et al**

WOULD AMEND RULES OF EVIDENCE TO EXPRESSLY REFERENCE DIGITAL EVIDENCE AND VARIOUS RULES OF PROCEDURE TO SPECIFICALLY ADDRESS DISCLOSURE OF ELECTRONICALLY STORED INFORMATION

ORDERED: Petition to Amend Rules 1001, 1002, 1004, 1006, 1007, and 1008, Rules of Evidence; Rules 15.1, 15.2, 15.3, Rules of Criminal Procedure; Rules 16, 44, 73, Rules of Procedure for the Juvenile Court; and Rule 10, Rules of Procedure for Eviction Actions = ADOPTED as modified, effective January 1, 2019.

**MINUTES**  
*Arizona Supreme Court*  
**Monday, August 27, 2018**

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**R-18-0009**  
(16)

**RULE 42, ER 1.2, RULES OF THE SUPREME COURT**

WOULD AMEND RULE 42, ETHICAL RULE 1.2, RULES OF THE SUPREME COURT TO ALLOW LAWYERS TO ETHICALLY ADVISE AND ASSIST CLIENTS IN MATTERS THAT ARE EXPRESSLY LEGAL UNDER ARIZONA LAW BUT THAT MAY VIOLATE FEDERAL LAW

ORDERED: Petition to Amend Rule 42, Ethical Rule 1.2, Rules of the Supreme Court = DENIED.

**R-18-0013**  
(17)

**RULES 38 AND 39, RULES OF THE SUPREME COURT**

WOULD REMOVE FINANCIAL BURDENS ON ATTORNEYS LICENSED IN OTHER STATES WHO REPRESENT TRIBES IN ARIZONA ICWA CASES AND PROVIDE FOR ONGOING SPECIAL ADMISSION WITHOUT FEES OF THESE ATTORNEYS FOR ICWA CASES

ORDERED: Petition to Amend Rules 38 and 39, Rules of the Supreme Court = DENIED.

**R-17-0033**  
(18)

**RULE 113(i), JUSTICE COURT RULES OF CIVIL PROC**

WOULD AMEND TIME FOR SERVICE IN JUSTICE COURT CIVIL CASES FROM 120 DAYS TO 90 DAYS, TO CONFORM WITH RULE 4(i), RULES OF CIVIL PROCEDURE USED IN SUPERIOR COURT CIVIL CASES

ORDERED: Petition to Amend Rule 113(i), Justice Court Rules of Civil Procedure = ADOPTED, effective January 1, 2019.

**MINUTES**  
*Arizona Supreme Court*  
**Monday, August 27, 2018**

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**R-17-0037**  
(19)

**RULE 7, RULES OF CRIMINAL PROCEDURE**

WOULD REPEAL ORDER NO. R-16-0041 OR AMEND THE CURRENT RULE 7, RULES OF CRIMINAL PROCEDURE BASED UPON THE NEW RULES BEING IN DIRECT CONFLICT WITH THE ARIZONA REVISED STATUTES AND BEING IMPLEMENTED IN VIOLATION OF THE ARIZONA CONSTITUTION

ORDERED: Petition to Repeal Order No. R-16-0041 or Amend Rule 7, Rules of Criminal Procedure = DENIED.

**R-18-0003**  
(20)

**RULE 807, RULES OF EVIDENCE**

WOULD AMEND RULE 807, RULES OF EVIDENCE TO CONFORM TO PENDING AMENDMENT OF FEDERAL RULE OF EVIDENCE 807

ORDERED: Petition to Amend Rule 807, Rules of Evidence = ADOPTED as modified, effective January 1, 2019.

**R-18-0012**  
(21)

**RULES 11.5 AND 11.6, RULES OF CRIMINAL PROCEDURE**

WOULD AMEND RULES 11.5 AND 11.6, RULES OF CRIMINAL PROCEDURE TO ENABLE THE COURTS TO MORE EFFECTIVELY HANDLE INDIVIDUALS IN THE JUSTICE SYSTEM WHO HAVE MENTAL HEALTH ISSUES

ORDERED: Petition to Amend Rules 11.5 and 11.6, Rules of Criminal Procedure = ADOPTED as modified, effective January 1, 2019.



**MINUTES**  
*Arizona Supreme Court*  
**Monday, August 27, 2018**

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**R-18-0014**  
(22)

**RULES 32, 46-49, 53 et al, RULES OF SUPREME COURT**

WOULD CLARIFY THE PROCESS FOR APPOINTING AND OVERSEEING  
THE FUNCTIONS OF CHIEF BAR COUNSEL

ORDERED: Petition to Amend Rules 32, 46-49, 53, 55-58, and 60-63, Rules of  
the Supreme Court = ADOPTED as modified, effective January 1, 2019.

**R-18-0015**  
(23)

**RULE 32(c)(7), RULES OF THE SUPREME COURT**

WOULD AUTHORIZE THE EXECUTIVE DIRECTOR OF THE STATE BAR  
TO WAIVE THE DUES OF A MEMBER FOR PERSONAL HARDSHIP,  
SUBJECT TO BOARD OF GOVERNORS REVIEW OF DENIAL

ORDERED: Petition to Amend Rule 32(c)(7), Rules of the Supreme Court =  
ADOPTED as modified. effective January 1, 2019.

**R-18-0016**  
(24)

**RULE 45, RULES OF THE SUPREME COURT**

WOULD AMEND RULE 45, RULES OF THE SUPREME COURT TO  
ELIMINATE OUTDATED PROVISIONS AND TO ALLOW FUTURE  
CHANGES IN DELINQUENCY FEES WITHOUT FURTHER RULE  
AMENDMENT

ORDERED: Petition to Amend Rule 45, Rules of the Supreme Court =  
ADOPTED as modified, effective January 1, 2019.

**MINUTES**  
*Arizona Supreme Court*  
**Monday, August 27, 2018**

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**R-18-0020**  
(25)

**RULES 5 AND 13, RULES OF EVICTION ACTIONS**

WOULD STREAMLINE PLEADING REQUIREMENTS FOR EVICTION ACTIONS AGAINST TENANTS WHOSE HOUSING IS SUBSIDIZED AND ENSURE THAT LANDLORDS ONLY SEEK MONETARY JUDGMENTS FROM A TENANT'S PORTION OF SUBSIDIZED RENT

ORDERED: Petition to Amend Rules 5(b), 5(c), and 13(a), Rules of Procedure for Eviction Actions = ADOPTED as modified, effective January 1, 2019.

**R-17-0032**  
(26)

**RULE 42, ER 8.4, RULES OF THE SUPREME COURT**

WOULD AMEND RULE 42, ETHICAL RULE 8.4, RULES OF THE SUPREME COURT TO ADD LANGUAGE ADOPTED BY THE ABA IN MODEL RULE 8.4 AS IT APPLIES TO NON-DISCRIMINATION

ORDERED: Petition to Amend Rule 42, Ethical Rule 8.4, Rules of the Supreme Court = DENIED.

**R-17-0043**  
(27)

**RULE 123(g), RULES OF THE SUPREME COURT**

WOULD REQUIRE UNDER RULE 123(g), RULES OF THE SUPREME COURT THAT COURT CLERKS AFFORD EQUAL REMOTE ELECTRONIC ACCESS TO COURT RECORDS TO BOTH COUNSEL AND SELF-REPRESENTING LITIGANTS, INCLUDING IN FAMILY LAW CASES

ORDERED: Petition to Amend Rule 123(g), Rules of the Supreme Court = ADOPTED as modified, effective January 1, 2019.

**MINUTES**  
*Arizona Supreme Court*  
**Monday, August 27, 2018**

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**R-17-0047**  
(28)

**TERMINOLOGY, COMMISSION ON JUDICIAL CONDUCT**

WOULD AMEND THE RULES OF THE COMMISSION ON JUDICIAL CONDUCT TERMINOLOGY SECTION

ORDERED: Petition to Amend Terminology Section, Rules of the Commission on Judicial Conduct = ADOPTED as modified, effective January 1, 2019.

**R-17-0048**  
(29)

**RULE 34(f)(4), RULES OF THE SUPREME COURT**

WOULD DELETE RULE 34(f)(4), RULES OF THE SUPREME COURT WHICH MAKES A PERSON INELIGIBLE FOR BAR ADMISSION ON MOTION IF THE PERSON FAILED TO ACHIEVE AN ARIZONA SCALED SCORE ON THE UNIFORM BAR EXAMINATION WITHIN FIVE YEARS OF THE DATE OF FILING AN APPLICATION

ORDERED: Petition to Amend Rule 34(f)(4), Rules of the Supreme Court = DENIED.

**R-17-0053**  
(30)

**RULE 37(d)(1), RULES OF THE SUPREME COURT**

WOULD AMEND RULE 37(d)(1), RULES OF THE SUPREME COURT TO ALLOW FOR PARTIAL REFUND OF BAR EXAM FEES TO APPLICANTS WHO MUST FIRST OBTAIN APPROVAL FROM THE COMMITTEE ON EXAMINATIONS TO SIT FOR THE EXAM, WHOSE APPROVAL OCCURS AFTER THE REGISTRATION DEADLINE, AND WHO WITHDRAW FROM TAKING THE EXAM

ORDERED: Petition to Amend Rule 37(d)(1), Rules of the Supreme Court = ADOPTED as modified, effective January 1, 2019.

**MINUTES**  
*Arizona Supreme Court*  
**Monday, August 27, 2018**

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**R-18-0001**  
(31)

**RULES OF CRIMINAL PROCEDURE**

WOULD REPEAL RULE 39, RULES OF CRIMINAL PROCEDURE AND  
INTERLINEATE THE VICTIMS' RIGHTS PROVISIONS IN EACH  
APPLICABLE CRIMINAL RULE

ORDERED: Petition to Repeal Rule 39, Rules of Criminal Procedure and Amend  
the Rules of Criminal Procedure = DENIED.

**R-18-0006**  
(32)

**NEW RULE 42.1, RULES OF THE SUPREME COURT**

WOULD ADD RULE 42.1, RULES OF THE SUPREME COURT CREATING  
AN ATTORNEY ETHICS ADVISORY COMMITTEE THAT CAN ISSUE  
LAWYER ETHICS, PROFESSIONALISM, AND UNAUTHORIZED  
PRACTICE OF LAW OPINIONS

ORDERED: Petition for Adoption of New Rule 42.1, Rules of the Supreme Court  
= ADOPTED as modified, effective January 1, 2019.

**R-18-0022**  
(33)

**RULE 1.6(b)(1)(E), RULES OF CRIMINAL PROCEDURE**

WOULD AMEND RULE 1.6(b)(1)(E), RULES OF CRIMINAL PROCEDURE  
TO SET PAGE LIMITS FOR HANDWRITTEN APPELLATE PLEADINGS  
AND TO REQUIRE AN ORIGINAL AND ONE COPY OF SUCH PLEADINGS

ORDERED: Petition to Amend Rule 1.6(b)(1)(E), Rules of Criminal Procedure =  
ADOPTED on a permanent basis.

# MINUTES

No. 6402

En Banc

*Arizona Supreme Court*  
**Monday, August 27, 2018**

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**R-18-0023**  
(34)

## **RULE 95, RULES OF FAMILY LAW PROCEDURE**

WOULD ELIMINATE OR AMEND RULE 95, RULES OF FAMILY LAW PROCEDURE TO PREVENT COURT APPOINTMENT OF A SPECIAL MASTER OVER THE PARTIES' OBJECTION IN FAMILY LAW MATTERS

ORDERED: Petition to Amend Rule 95, Rules of Family Law Procedure =  
DENIED.

**R-17-0054**  
(35)

## **RULES OF FAMILY LAW PROCEDURE AND ARCAP 9**

WOULD MAKE STYLISTIC AND SUBSTANTIVE AMENDMENTS TO THE RULES OF FAMILY LAW PROCEDURE AND RULE 9, RULES OF CIVIL APPELLATE PROCEDURE

Separate Order.



The foregoing action was taken by the Arizona Supreme Court on Monday, August 27, 2018.

\_\_\_\_\_  
Scott Bales

Date: 8/28/2018

**Scott Bales, Chief Justice**